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10 Attorneys for Individual and Representative Plaintiffs

11 IN THE UNITED STATES DISTRICT COURT  
12 NORTHERN DISTRICT OF CALIFORNIA

13 Philip Wong, Frederic Chaussy, Leslie  
Marie Shearn, and Chad Barbieri,  
14 individually, on behalf of all others  
similarly situated, and on behalf of the  
15 general public,

16 Plaintiffs,

17 vs.

18 HSBC Mortgage Corporation (USA);  
HSBC Bank USA, N.A.; and DOES 1  
19 through 50, inclusive,

20 Defendants.  
21

Case No.: 3:07-cv-2446 MMC

**DECLARATION OF BRYAN J.  
SCHWARTZ, ESQ., IN OPPOSITION TO  
DEFENDANTS' "MOTION FOR RULE  
11(C) SANCTIONS"**

22  
23 1. I am counsel for the Plaintiffs in this matter, over 18 years old, and competent to testify.

24 2. I certify that **Exhibit 1** represents a true and correct copy of Defendants' letter to  
25 Plaintiffs, dated May 12, 2008.

26  
27 3. I certify that **Exhibit 2** represents a true and correct copy of Defendants' April 8, 2008  
28 Request For Production of Documents to Plaintiff Wong, Set II.

1 4. I certify that **Exhibit 3** represents a true and correct copy of the undersigned's May 13,  
2 2008 email on Plaintiffs' behalf to Defendants' counsel, Michelle Barrett of Littler Mendelson,  
3 "Subject: Wong, et al. v. HSBC Mortgage Corp, et al; privilege log forthcoming."

4 5. I certify that **Exhibit 4** represents a true and correct copy of the undersigned's April 9,  
5 2008 email on Plaintiffs' behalf to Defendants' counsel, Ms. Barrett, George Tichy, and Justin  
6 Curley of Littler Mendelson, "Subject: Wong v. HSBC; Return of Privileged Information  
7 Inadvertently Disclosed."

9 6. I am informed and believe that, on or about September 5, 2008, the same day Defendants  
10 presented their sanctions Motion to the Court, Nichols Kaster, LLP, in San Francisco, received a  
11 copy of Defendants' Motion with exhibits. Plaintiffs' counsel has retained copies of all  
12 communications sent to or received from clients in this matter, and has not destroyed or requested  
13 destruction of any, without copies being preserved.

14 7. Defendants requested all HSBC-related documents in the Plaintiffs' possession, and  
15 Plaintiffs agreed to produce such, other than documents which are subject to the attorney-client  
16 and attorney work product privileges. Upon information and belief, Plaintiffs have produced all  
17 such documents.

18 8. Alleged retaliation against Plaintiff for his wage complaint, whether or not to engage the  
19 representation of Nichols Kaster & Anderson, LLP (now called Nichols Kaster, LLP), and  
20 whether Defendants were acting properly with respect to Family and Medical Leave requested by  
21 Mr. Wong encompass a tiny fraction of the communications between counsel and Plaintiff Wong  
22 regarding this wage/hour case. I have been engaged in dozens of communications with Mr. Wong  
23 regarding this case which did not relate, in any manner, to the aforementioned subjects, since the  
24 latter are peripheral to the central issue in this case: whether Defendants' loan officers were  
25 misclassified.  
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1 9. To avoid extraordinary inconvenience of the type that Defendants have caused through  
2 their frivolous motion, the undersigned will in the future seek to avoid communicating on  
3 employers' email accounts, to avoid any malicious efforts to discover privileged information, and  
4 more commonly, inadvertent disclosure – just as the undersigned has typically done in this case  
5 and in the past. Of hundreds of communications with clients in this matter, only a small handful  
6 occurred on work email. On the other hand, to the extent that lapses occur in the future, *i.e.*,  
7 clients communicate with the undersigned or other employees of this firm via work email, or vice  
8 versa, the undersigned will once again instruct such clients to delete these privileged  
9 communications, to protect the attorney-client and attorney work product privileges, and to avoid  
10 the possibility of inadvertent disclosure.  
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12 10. Notwithstanding the December 28, 2007, 2:28 p.m., attorney-client privileged email,  
13 between Wong and the undersigned (Lord Dec., Exh. A, pp. 29-30 (Dkt. #184-3)), in which  
14 Plaintiff appears to indicate that he believed he had sent a fax to counsel regarding “ytd funding  
15 numbers,” the undersigned, upon information and belief, never received such information from  
16 Plaintiff Wong. As such, this information, which Mr. Wong no longer possesses (upon  
17 information and belief), and which was discussed in the context of evaluating a reprisal claim by  
18 Mr. Wong which was never brought, was not produced in discovery.  
19

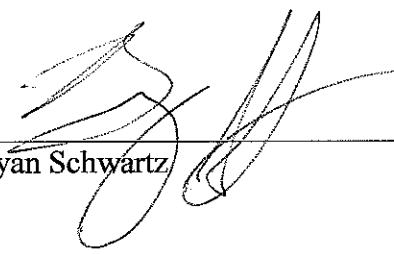
20 11. The undersigned's recognition that communications via work email might lead to  
21 inadvertent disclosure led him to advise Mr. Wong to begin using only personal email for  
22 communications.  
23

24 12. The undersigned never thought or believed that any emails conducted via work email  
25 waived privilege automatically, but, in an abundance of caution, took reasonable steps to protect  
26 privileges from being breached.  
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1 13. Without having statistical or expert data on point, the undersigned's experience suggests  
2 that virtually every client, co-worker, and friend whose work email permits sending to and  
3 receiving from outside parties does have personal communications from time to time on this  
4 email system, which he or she does not expect to be read by non-addressees at the employer.  
5

6  
7 Pursuant to 28 U.S.C. § 1746 I declare under penalty of perjury under the laws of the United  
8 States that the foregoing is true and correct to the best of my knowledge, information, and belief.  
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10 DATED: 9/19/08

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12 Bryan Schwartz  
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